United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

Original w/ affidavit of mailing

75-1013

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P/S

To be argued by
PAUL B. BERGMAN

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1013

UNITED STATES OF AMERICA,
Appellant,

—against—

AMPARO PELAEZ DE GARCES,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

PAUL B. BERGMAN,
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Of Counsel.

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Preliminary Statement

The United States appeals from a judgment of acquittal, entered by the United States District Court for the Eastern District of New York (Costantino, *J.*), after a jury had returned a verdict of guilty.* The appellee, Amparo Palaez de Garces, was charged in a two count indictment with importation of one and a half kilograms of cocaine in violation of 21 U.S.C. § 952(a) and 21 U.S.C. § 960(a)(1), and possession of the cocaine with intent to distribute it, in violation of 21 U.S.C. § 841(a)(1). At the close of the defendant's case the district court dismissed the second

* The appeal is taken pursuant to 18 U.S.C. 3731. See *United States* v. *Wilson*, — U.S. —, 95 S. Ct. 1013 (1975); *United States* v. *Jenkins*, — U.S. —, 95 S. Ct. 1006 (1975). On February 6, 1975, Judge Timbers signed an order extending the time in which the United States could file its brief until 30 days after the decision in *United States* v. *Jenkins*, *supra*.

count of the indictment, possession with intent to distribute cocaine. The jury then returned a verdict of guilty with respect to Count I of the indictment which charged the appellee with knowingly importing cocaine. Pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure, the district court judge directed the entry of a judgment of acquittal on the grounds that the United States failed to prove beyond a reasonable doubt that the appellee knowingly imported the cocaine.

On this appeal, it is our submission that the district court judge erroneously concluded that the evidence was insufficient to sustain the verdict of guilty. We submit that the evidence was more than sufficient for a jury to conclude beyond a reasonable doubt that the appellee knowingly imported cocaine into the United States.

Statement of Facts

A. The Facts As Found By The Jury.[1]

On June 23, 1974, the appellee, a resident alien in the United States, entered her native country of Colombia (App. 80). At some time during her stay the appellee, who was an unemployed hotel maid in the United States, made a $500 purchase of five Louis XV style beds (App. 118-19, 389).[2] The Louis XV beds were shipped out of Colombia on Air France Airlines on September 3, arriving at John F. Kennedy International Airport on September 4th (App. 45). The cost of shipment was prepaid in the amount of $156.51 (App. 51). The Air France airway bill (Exhibit 1), and the cargo tally sheet (App. 387, Exhibit 2)

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[1] Since the jury returned a verdict of guilty, it must be presumed that it credited the testimony of our witnesses, and drew all of the inferences from that testimony in favor of the United States.

[2] In response to questions by DEA agents following her arrest, the appellee stated that she had purchased the beds during a vacation in Colombia (App. 240-41).

listed the appellee as consignee of the shipment of beds, but the airway bill falsely gave appellee's address as 51-55 Van Kleen Street, Elmhurst, New York (App. 44). An arrival notice sent on September 6th to the listed address by Air France was apparently accepted by an unknown person at that address (App. 49-50).

Five days after the bed shipment arrived at John F. Kennedy International Airport, a United States Customs enforcement team, acting on a tip, located the shipment identified in the Air France airway bill (App. 386, Exhibit 1) and, after an extensive examination, discovered one and a half kilograms of cocaine concealed inside the headboard of one of the beds. This headboard, unlike the others, had been marked with several x's. (App. 53-62). An experienced Customs agent who participated in the search characterized the smuggling attempt as an "excellent job". (App. 77).

On September 5th, the day after the beds arrived in New York, the appellee appeared at a Spanish travel agency, Excursiones Pan Americanas, to employ the agency to pick up and deliver the bed shipment from the Air France building at Kennedy Airport (App. 110). The appellee provided the agency with $300 (App. 113, Exhibit 16) and a number of documents. Among the documents were the Air France airway bill with the false address to which the furniture was to be delivered (App. 386, Exhibit 1) and the bill of sale for the bed pieces (App. 389, Exhibit 17).

On September 6th, Frank Brea, an employee of the travel agency, drove to Kennedy Airport to pick up the shipment of beds (App. 114). He was under the impression that the beds were to be delivered to a "Bankqueen" Street, apparently the Van Kleen Street listed in the airway bill (App. 134). He was unable to obtain the shipment—an Air France cargo officer informed him that there was a question as to the purpose for which the goods were being imported, and that either a broker was needed or the consignee would have to appear at the airport (App. 120-21). That same after-

noon, after being informed of the unsuccessful attempt to deliver the beds, the appellee again went to the travel agency and signed a power of attorney authorizing the travel agency to pick up the shipment (App. 122-23, 390, Exhibit 18). She also agreed to pay for a false letter to be provided by the travel agency which would indicate that the beds had been imported as samples for a furniture store (App. 127-139, 223-25). Following this conversation with the appellee the travel agency procured a false furniture store letter (App. 223-25).

On Saturday, September 7th, after Frank Brea was again unable to deliver the shipment, the defendant made her third trip to the travel agency (App. 130-32). At that time, according to appellee's own testimony, as she had been all week, the appellee was ill and in pain from internal hemorrhaging in her stomach (App. 295-96). She had been advised by her doctor to enter a hospital (App. 268-69). Nonetheless, she asked Frank Brea to accompany her to obtain a broker and then go to the airport to pick up the beds (App. 132). When it was explained to her that brokers were not available on Saturday, the appellee stated that she would provide whatever money was necessary to complete delivery of the bed shipment. (Mr. Brea testified that the appellee said, ". . . don't worry about the money. If I have got to pay more don't worry. I will pay whatever it is.") (App. 132-23). That same afternoon the appellee checked into a hospital (App. 268-69). During her three day stay in the hospital, the appellee asked her niece to deliver a medical certificate, as proof of her illness, to the travel agency (App. 322).

On September 10th, a Tuesday, the appellee, still feeling weak (App. 295), left the hospital. She immediately telephoned the travel agency to find out about the beds (App. 296 and then took a taxi to 9201 Lamont Avenue in Queens (App. 294).[3] On the morning of Wednesday, the 11th, the

[3] Subsequently, the DEA agents ascertained that the appellee did not reside at 9201 Lamont Avenue (App. 237).

travel agency was informed that the beds were to be delivered to 9201 Lamont Ave. (App. 134-35, 271-72).

On that Wednesday, Frank Brea made his third trip to Kennedy Airport to obtain the beds for delivery. Drug Enforcement Administration (hereinafter DEA) agents intercepted Brea at the Air France Cargo office (App. 99-100). At their request, Brea agreed to make a "controlled delivery" of the beds which still contained a small quantity of cocaine. The DEA agents marked an "x" on one of the other headboards to resemble exactly the "x" that was marked on the original headboard in which the cocaine was found. The headboards were then placed in their crate in such a manner that the "x" would immediately be visible to a person looking for the marks (App. 101). A DEA agent accompanied Frank Brea on the delivery trip (App 101-102).

When Brea and the DEA agent arrived at 9201 Lamont Avenue, the appellee, waiting on the street, acknowledged that the shipment was hers (App. 137, 232-33) and, despite the DEA agent's offer to carry the beds up to her apartment, directed Brea and the agent to leave the beds against the rear of the building (App. 233). The appellee explained that she did not have the keys to her apartment—her cousin who was working had the keys (App. 137). In fact, as appellee admitted at trial, the apartment had been deliberately left unlocked by her (App. 297).

After the beds were unloaded, the appellee immediately examined the open crate which contained the plainly visible x-marked headboard. After this inspection the appellee announced her satisfaction with the shipment (App. 234). The appellee refused another offer to have the beds carried inside the apartment building (App. 234-33). DEA agent Jerry Castillo, who had accompanied Frank Brea, observed that the appellee "was a little nervous because she was fooling around or juggling a package of cigarettes and she was constantly moving it up and down" (App. 235). The

appellee refused a third offer to have the beds carried inside the building and she tipped the DEA agent and Brea $10 apiece. After appellee signed a receipt (App. 391, Exhibit 22) for the bed shipment she was placed under arrest (App. 236).

B. The Excluded Evidence.

1. The Drug Enforcement Administration was alerted to the cocaine shipment by the discovery by a private citizen of a letter (App. 393-96, Hearing Exhibit 2, 3) detailing the shipment and naming the appellee as consignee.[4] The intercepted letter, written from one co-conspirator to another, outlines substantially the plan for importing the cocaine, and makes clear that the appellee was given $300 while still in Colombia. Moreover, it indicates that appellee was to be paid $2000 (not $100 as she claimed) for accepting shipment of the bed pieces. Most importantly, the letter is addressed to the same false address appearing on the airway bill (App. 386, Exhibit 1).

The United States filed two memoranda arguing that the letter was admissible under the co-conspirator exception to the hearsay rule because a "fair preponderance" of the non-hearsay evidence established that the appellee both knew and was a co-conspirator of the other individuals named in the letter. The district court, however, ruled that the letter was not admissible (App 33-34).

2. The district court also refused to allow in evidence a letter (App. 390, Exhibit 18) signed by the appellee which authorized Frank Brea to pick up the beds. This letter was significant because it falsely set forth the appellee's permanent residence as the same residence used in (1) the airway bill (App 386, Exhibit 1) and in (2) the intercepted letter

[4] The letter had been opened inadvertently by a tenant who resided in the same building as the addressee of the letter and who had the same last name (App. 10). Upon reading its contents he contacted the F.B.I. which directed him to the D.E.A. (App. 11, 22).

discussed above. Although the appellee admitted signing this letter, she claimed she did not understand what she was signing (App. 122-26, 300-301). Rather than letting the jury evaluate the merit of her explanation; the district court ruled that, because she might not have understood what she was signing, the letter was not admissible (App. 122-26).

C. The Motion For A Judgment of Acquittal After The Close of The Case-in-Chief.

After the close of the case-in-chief, the appellee moved for a judgment of acquittal on the ground that the evidence was insufficient to establish that she was aware that cocaine was concealed in the bed boards (App. 259):

> Mr. Bezozo: I think that the whole question in this case is knowledge on the part of the defendant. There is no question on that * * *

After a recess, apparently to consider the issue, the district court denied the motion for the entry of a judgment of acquittal (App. 261).

D. The Defendant's Story.

The defense consisted of the testimony of two witnesses, the appellee and a niece, Maria Quinones.

The appellee, who resides at 44 Railroad Avenue, Valley Stream, New York, testified that while on her vacation in Colombia she was asked by a Mr. Valeacia, a man she met at a money exchange in Medellin, to receive shipment of five beds that were being sent to the United States. It was explained that the person to whom the beds were ultimately intended was not a resident of the United States and it would be easier for appellee to receive the shipment. Appellee testified that she was promised $100 for her efforts, to be paid when the beds were delivered (App. 292).

On her return to the United States appellee was contacted by a Jorge Rodriguez; he provided the money and necessary documents to obtain the bed shipment. Rodriguez also directed her to the travel agency which would make the delivery. Prior to entering the hospital to receive treatment for internal hemorrhaging, appellee made three trips to the travel agency to arrange the delivery. After leaving the hospital, appellee went to her niece's (a Nora Calle) apartment at 9201 Lamont Avenue. The next morning she waited for the delivery of the bed shipment which was then to be picked up by Rodriguez.

Appellee denied ever purchasing the beds in Colombia or agreeing to pay for procurement of a falsified furniture store letter. Appellee testified that she had no knowledge—at any time—that the bed shipment contained cocaine (App. 265-272, 314-15).

E. The Contradictions In The Defendant's Story.

On five separate, major points, the appellee's testimony was contradicted by prosecution witnesses whose version of the events the jury credited:

1—The appellee testified that she had no knowledge of the Air France airway bill (App. 284) or why 51-55 Van Kleen Street was falsely listed on the bill as her address (App. 303). Yet Frank Brea, an employee of the travel agency, testified that when the appellee first appeared at the agency, she had provided them with a number of documents, including the airway bill (App. 112, 115-116).

2—The appellee asserted on the witness stand that she had never purchased the beds (App. 267). Yet among the documents given the travel agency was the bill of sale (App. 389; Exhibit 17) bearing appellee's name and a stamp indicating the merchandise had been paid for in full. Furthermore, after the

appellee was arrested, she admitted to a DEA agent, after full *Miranda* warnings, that she had purchased the bed furniture while in Colombia (App. 240).

3—The appellee denied ever having offered to pay for a false letter from a furniture store (App. 305). Frank Brea testified that the appellee had, in fact, made such a promise, and it was in response to this promise that the travel agency had obtained such a false letter.

4—The appellee testified that the travel agency had not translated the authorization letter (App. 300) she signed on September 6th, i.e., she had no knowledge of its contents. This testimony was also contradicted by Frank Brea (App. 124):

> The Court: Was it [the authorization letter] typed in Spanish or—
>
> The Witness: English.
>
> The Court: Typed in English?
>
> The Witness: Yes, sir.
>
> The Court: Did you read it to her?
>
> The Witness: No. Mr. Salgado did.
>
> The Court: You read it in English and Spanish?
>
> The Witness: Right.

5—In her testimony covering the events at 9201 Lamont Avenue, the appellee asserted that she had left the apartment unlocked when she went downstairs to await the delivery of the beds (App. 297). Yet, Frank Brea testified that, in response to his offer to bring the beds up to her apartment, "she [appellee] said leave it over there because she didn't have the keys to the apartment. The cousin had the keys and she was working" (App. 137).

F. The Motion For A Judgment Of Acquittal After The Close Of The Entire Case.

The district court denied the motion for a judgment of acquittal with respect to Count I which charged the defendant with illegally importing the cocaine. The district court, however, granted the motion for a judgment of acquittal on Count II, which charged the appellee with possession of cocaine with intent to distribute it, on the ground that the evidence failed to establish that the appellee ever had possession of the cocaine (App. 324-25):

> The Court: I am not talking about possession on her part, knowledge, possession and control on her part, not on what the Drug Enforcement agency did. You have to show control by the defendant. If she had control she could have done whatever she wanted with it.
>
> There was a difficult time getting the beds out of there and then going back to the hospital and going to the travel agency, going back with letters, signing English letters and Spanish letters. She had no control.

G. The Verdict Of The Jury And The District Court's Decision.

After the jury returned a verdict of guilty on Count I, the district court judge granted the motion for a judgment of acquittal. In so doing, he stated (App. 383-84):

> "As noted above, one of the essential elements of the count on which the jury returned a guilty verdict was knowledge that she was importing a controlled substance. In the factual context of this case, this means knowledge that the headboards imported into this country contained a controlled substance. In its effort to show that defendant had knowledge of the controlled substance, the prosecution introduced only

circumstantial evidence. In appropriate circumstances, circumstantial evidence may be sufficient to justify an inference that a defendant was aware that the controlled substances were illegally imported, United States against Nathan, 476 F.2d 456 (sec. circuit 1973, cert. denied) 414 United States 823 (1973).

But in the case at bar, the circumstantial evidence of her knowledge was so weak as to compel this court to conclude that as a matter of law, there must be a reasonable doubt in a reasonable mind as to whether one of the essential elements of the crime charged was present here."

ARGUMENT

The evidence was sufficient to sustain the jury's guilty verdict.

1. On a motion for judgment verdict of acquittal, the judge must ascertain whether the evidence presented to the jury, provides sufficient basis for a reasonable mind to

> 'fairly conclude guilt beyond a reasonable doubt. . . . [I]f there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted. If he concludes that either of two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter."

Curley v. *United States*, 81 U.S. App. D.C. 389, 160 F.2d 229, 232-33 (D.C. Cir.), *cert. denied*, 331 U.S. 837 (1947), *adopted* in *United States* v. *Taylor*, 464 F.2d 240, 244-45 (2d Cir. 1972). Moreover, all questions of credibility are the province of the jury, and not the district court. Concomitantly, in determining the sufficiency of the evidence following a conviction, conflicts between witnesses must

be resolved in favor of the United States, and the total evidence adduced must be examined in the light most favorable to it. *United States* v. *Glasser*, 315 U.S. 60, 80 (1942).

The only element of the crime illegal importation of cocaine here at issue was whether or not the evidence was sufficient to prove that the appellee had actual knowledge that she was importing cocaine into the United States (App. 349, Charge to the Jury). This element may, of course, be proven by circumstantial evidence, and, indeed, often such proof is the only means of establishing this element of the offense. *Anderson* v. *United States*, 270 F.2d 124, 127 (6th Cir. 1959), quoted in *United States* v. *Sheiner*, 410 F.2d 337, 340 (2d Cir.), *cert. denied*, 396 U.S. 825 (1969). *See United States* v. *Nathan*, 476 F.2d 456, 461 (2d Cir.), *cert. denied*, 414 U.S. 823 (1973).[5]

Moreover, where a jury receives—as this jury in this case did (App. 350)—a "conscious avoidance" charge, the jury may infer knowledge if it finds beyond a reasonable doubt that the defendant deliberately avoided acquiring knowledge of the illegal nature of her enterprise for the purpose of being able to assert her ignorance if she was discovered with the substance in her possession. *United States* v. *Joly*, 493 F.2d 672, 675-77 (2d Cir. 1974).

2. Applying these basic principles to the facts of the instant case, it is plain that the evidence compels the conclusion that the appellee knowingly imported cocaine into this country. Here appellee, an unemployed hotel maid,

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[5] Where an essential element of the offense has been proven by circumstantial evidence, the evidence need not exclude every reasonable hypothesis inconsistent with the guilt of the defendant. The jury may draw a particular inference in support of an essential allegation even though an opposite inference may be drawn from the evidence in proof. In considering the totality of the case the jury may "color" any one fact with the other facts adduced. *United States* v. *Taylor*, 464 F.2d 240, 244-45 (2d Cir. 1972).

purchased five Louis XV beds from a Colombian furniture store at a price of $500—the beds were later found by Customs agents to contain packages of cocaine; as consignee of the beds, the appellee provided a false address to the company which shipped the beds to her in the United States; according to her own testimony, the appellee, despite a severe illness and substantial pain, undertook strenuous efforts to obtain possession of the beds when they arrived in the United States; the appellee told the travel agency whom she had employed to pick up and deliver the beds from Kennedy Airport that she would pay any amount of money necessary to obtain delivery of the beds, and engaged in fraudulent activity (the furniture store letter) to further that goal; when the beds were finally delivered, and the appellee immediately examined the one crate with the exposed, x-marked headboard (the only headboard which contained cocaine) and then pronounced her satisfaction with the shipment; during this delivery, which had been delayed for nearly a week, the appellee exhibited signs of nervousness; finally, after delivery of the beds, the appellee tipped the two deliverymen $20 and signed a receipt for the shipment, at which point she was arrested. Moreover, she claims to have gone through all this trouble for only $100.

In effect, the jury was presented with a picture of the appellee's conduct which simply could not be explained other than on the basis that the appellee knowingly engaged in a scheme to smuggle cocaine into the United States.

Moreover, having been instructed as to "conscious avoidance" of knowledge (App. 350), the jury was also entitled to consider the appellee's failure, despite the extremely unusual circumstances, to make any inquiry regarding the purpose of the shipment for this furniture into the United States. Here appellee asserted she was asked by a stranger in Colombia to receive a shipment of bed samples in the United States. She tes-

tified that, once back in the United States, she was repeatedly telephoned by another stranger, Jorge Rodriguez (App. 285-86, 306-307), who did not provide an address or telephone number for himself (App. 293), or even indicate in any way that he was connected with the furniture business, or even explain why (App. 281-82) he wanted the bed samples delivered to first one and then another location in Queens (App. 293-94). The one meeting to have taken place between appellee and this man was conducted in a location at least somewhat suggestive of secrecy (App. 287-293). According to appellee, at this meeting, and in numerous phone calls, Rodriguez, conveyed a great sense of urgency (App. 270) that she obtain that shipment (on the morning after she left the hospital the appellee received three phone calls from Rodriguez) (App. 268). None of this, the appellee asserted to the jury, prompted her to inquire as to the exact nature or legality of the enterprise with which she was involved (App. 282).

Clearly, as a matter of common sense, the jury was entitled to treat the appellee's deliberate avoidance of knowledge of the illegal nature of her activity as the equivalent of knowledge. *See United States* v. *Olivares Vega*, 495 F.2d 827, 830 (2d Cir., 1974); *United States* v. *Pui Kan Lam*, 483 F.2d 1202, 1208 (2d Cir.), *cert. denied*, 415 U.S. 984 (1973).[6]

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[6] In *United States* v. *Olivares-Vega*, 495 F.2d 827, 830 (2d Cir. 1974), the appellant had been convicted of illegal importation of cocaine, 21 U.S.C. § 952(a), and possession with intent to distribute that drug, 21 U.S.C. § 841(a)(1). This court ruled that the following set of facts could be the basis for an inference of conscious avoidance:

> "Here appellant was a longtime airline employee; the suitcases [containing the cocaine] seemed unusually heavy to him by his own admission; he testified that he was propositioned twice by Galardo, a fellow worker, to take the suitcases to a hotel in New York [from Chile]; and according to his own story he was to receive $300 for delivering the suitcases to an unknown party in New York."

3. These facts support a finding beyond a reasonable doubt that the appellee's involvement in the smuggling operation was far more than that of an innocent consignee of a shipment of beds; indeed, while challenges to the sufficiency of the evidence to sustain a conviction are dealt with on a case by case basis, a comparison of the facts here with those in several recent cases show that a reversal of the judgment of acquittal is required here.

In *United States* v. *Joly*, 493 F.2d 672 (2d Cir. 1974), for example, the defendant had been apprehended in a customs search at Kennedy Airport after he left a plane, which had just arrived from Panama. The search revealed a package containing 330 grams of cocaine. The defendant's story was that a man on the plane had given him the package and promised him $100 if he took it through customs. The defendant argued that an inference of illegal knowledge based on conscious avoidance could not be drawn where so many alternatives existed, *i.e.*, the defendant, in his ignorance, could have been carrying almost any item. *Id.* at 675. This argument was rejected because "on these facts the jury was properly allowed to infer Joly's knowledge that he possessed cocaine." Id. at 677. Parenthetically, it is noted that the jury in the *Jolly* case received a nearly identical charge on an issue of "conscious avoidance", Id. at 674, as did the *de Garces* jury (App. 350).

Similarly, in *United States* v. *LaFroscia*, 485 F.2d 457 (2d Cir. 1973), the defendant's Volkswagon, shipped to the United States from Europe, was found to contain marijuana concealed in the roof and gas tank cavity. The defendant had followed a "bizarre itinerary" in Europe, he had failed to provide "any plausible explanation how such a large quantity of marijuana could have gotten into the Volkswagon without his knowledge", and the defendant made false statements to Customs agents. *Id.* at 458-59. On these facts, the claim of insufficiency of the evidence to

prove guilty knowledge was held to be "so insubstantial that we would have affirmed the conviction from the bench if it had stood alone." *Id.* at 458.

Finally, in *United States* v. *Carneglia*, 468 F.2d 1084 (2d Cir. 1972), *cert. denied*, 410 U.S. 945 (1973), the defendants were convicted of unlawful possession of goods stolen while in interstate commerce, knowing the same to be stolen. This Court concluded that evidence of possession-rental trucks driven by appellants were found to contain the stolen goods—and of guilty knowledge—basically, the appellants' familiarity with the trucks and their behavior suggesting concern about police surveillance—although "by no means overwhelming, warranted submission of the Government's case to the jury." *Id.* at 1087. In response to the appellants' story that they had only been helping a friend with two "balky" trucks, this Court stated "[p]erhaps the jury might reasonably have accepted that view, but surely it was not required to." *Id.* at 1088.

The circumstantial evidence here of appellee's knowledge that she was importing cocaine was at least of equal probity with the evidence of these cases. Accordingly, the verdict of guilty returned by the jury here should not have been disturbed.

CONCLUSION

The judgment of the district court should be reversed and the case remanded to the district court with direction to enter a judgment of conviction.

March 27, 1975

Respectfully submitted,

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* The United States Attorney wishes to acknowledge the assistance of Gregory J. Wallance in the preparation of this brief. Mr. Wallance is a second year law student at the Brooklyn Law School.

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AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS } ss
EASTERN DISTRICT OF NEW YORK

LYDIA FERNANDEZ being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 1st day of April 19 75 he served ~~a copy~~ two copies of the within

Brief for Appellant

by placing the same in a properly postpaid franked envelope addressed to:

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225 Broadway
New York, N. Y.

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, ~~Washington Street~~ 225 Cadman Plaza East, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this

1st day of April 19 75

Olga S. Morgan

OLGA S. MORGAN
Notary Public, State of New York
No. 24-4501966
Qualified in Kings County
Commission Expires March 30, 19 77